



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: CHARTER CITY STATUS REVIEW

MEETING DATE: MAY 3, 1995

PREPARED BY: CITY ATTORNEY

RECOMMENDED ACTION: Council consideration and direction. If desired, set dates for workshops to receive public input on charter contents.

BACKGROUND INFORMATION: At the January 31, 1995, "Shirtsleeve" meeting of the City Council, staff was directed to place on the Regular Agenda a discussion of the proposed charter for the City of Lodi. The purpose of this first meeting is to present the idea to the public and allow the Council to decide if it wishes to pursue this matter further with the drafting of a proposed charter.

This report is not intended as a recommendation for or against charters, but simply as an examination of:

1. the legal differences between Charter and General Law cities;
2. the practical differences;
3. the mechanics of becoming chartered city.

I AUTHORIZING LAW

The legal foundations for both general law and charter cities (also referred to as "home rule" charters) are found in Article 11 of the California Constitution. For general law cities, Article 11, Section 2 (a) says:

"The Legislature shall prescribe uniform procedures for city formation and provide for city powers."

APPROVED: _____

THOMAS A. PETERSON
City Manager

Under this constitutional grant of power, the State Legislature has adopted an extensive set of laws covering all aspects of operation for general law cities, including such things as the size and composition of councils, municipal election procedures, appointment and removal of officers and staff, etc. (Government Code Section 34000 et seq.).

For charter cities, Article 11, Section 3(a) provides:

For its own government, a county of city may adopt a charter by majority vote of its electors voting on the question. The charter is effective when filed with the Secretary of State. The charter may be amended, revised or repealed in the same manner.

The California Constitution, Article 11, Section 5 (a) further provides:

"It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to the restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws. City charters adopted pursuant to this constitution shall supersede any existing charter, and with respect to municipal affairs, shall supersede all laws inconsistent therewith." (emphasis added)

In other words, for matters of purely local concern (or "municipal affairs", discussed below) charter cities have "supreme authority" (Bishop vs. City of San Jose 81 Cal Rptr 465) to adopt their own laws, procedures or standards, which may be different than those applicable to general law cities. Of course, even charter cities are still subject to other constitutional limitations and guarantees such as due process and equal protection requirements (Wilson vs. City of Los Angeles 4 Cal. Rptr. 489).

In addition, some kinds of subjects determined to be of "statewide concern" are still subject to the State Legislature's authority and cannot be overridden by charter provisions. Whether a particular matter is a "municipal affair" (subject to charter provisions) or of "statewide concern" (subject to the legislature's control) can be determined only by the courts. The legislature can't simply declare a matter to be of "statewide concern", although it sometimes tries to do so. In such cases, the legislature's intent will be given by great weight by courts but occasionally the courts will find that the Legislature has exceeded its authority (Baggett vs. Gates 185 Cal. Rptr. 232). Statutes are sometimes passed by the Legislature saying explicitly that they apply to charter cities. The legislature does

this in spite of rulings which say that it is empowered "...neither to determine what constitutes a municipal affair nor to change such affairs into a matter of statewide concern." (California Federal Savings Vs City of Los Angeles 283 Cal Rptr 569).

There is an extensive (but not exhaustive) list of cases deciding whether certain specific matters are "municipal affairs" or of "statewide concern". A partial list of these includes:

STATEWIDE CONCERNS
(CHARTERS CAN'T DEVIATE FROM STATE STATUTES)

- traffic regulation
- telephone and telegraph franchises
- licensing of professions and trades (e.g., attorneys, contractors)
- compliance with the Ralph M. Brown Act (open meeting law)
- eminent domain laws
- municipal liability for personal injuries

MUNICIPAL AFFAIRS
(SUBJECT TO LOCAL CHARTER CONTROL)

- municipal election
- methods for ordinance enactment
- municipal contracting procedures
- issuing procedures for municipal bonds
- business licenses or taxes on occupations
- imposition of real estate transfer tax
- term limits

Charters will also be subordinate to state law if the subject addressed has been completely "preempted" by a complete and comprehensive state statutory scheme which occupies the entire subject, to the exclusion of any further local control (Bishop, supra). Illustrations of such topics include matters such as possession of hand guns, alcoholic beverage licenses and annexation laws. In those fields, the subject has been completely preempted by the State Legislature, and even charter cities are not free to deviate from the general laws.

II PRACTICAL DIFFERENCES

The most obvious practical difference between the two forms of city government is if local residents don't like the state law on a particular topic, they can change it, provided it is a "municipal affair." Probably the most common subjects addressed by charters (directly or indirectly) are financial matters because charter cities are free to try and find more cost effective measures in some matters than state law allows.

An example of the ways in which charter cities may be able to reduce costs involve such things as "prevailing wage" laws. (California Labor Code Section 1771 et seq.). Prevailing wage statutes require general law cities to pay no less than "generally prevailing rates" on public works contracts, even if contractors in the area are willing and able to use labor earning less than that. These laws almost invariably increase bid prices for public works contracts. Charter cities may be able to avoid such as requirements.

Charter cities also have greater flexibility in competitive bidding requirements for public works contracts (Public Contracts Code Section 20162). In some cases, this allows cities to reduce costs by negotiating prices directly with contractors, or by utilizing city staff to do the work. These practices are usually prohibited to general law cities. Likewise, charter cities have greater control over certain kinds of franchises (excluding telephone and telegraph) and over license fees charged for businesses.

Charter cities also have broader power over matters of municipal taxation, subject to certain state limitations such as Proposition 13 (the one percent limit on property taxes). Since charters must be approved by voters, in one sense they give local residents more control over municipal taxation than does general law.

Another area in which charter cities have an advantage is the authority to engage in profit making enterprises for public benefit while avoiding restrictions on the pledging of city credit, or making loans of public funds (California Constitution, Article 16 Section 6; "Anatomy of Charter Experience", Lounsbery, 1994 (League of California Cities). Many cities operate economic development programs or business assistance programs under their charter powers.

Other practical distinctions may include broader authority for charter cities to adopt "local preference" rules for award of city contracts (Domar Electric vs. City of Los Angeles 1994 WL720728) and

avoiding state law prohibiting replacement of existing public employees with contract personnel. (San Diego Adult Educators vs. PERB 273 Cal Rptr 53) Some cities also feel charter status may provide greater protection from unfunded state mandates, but as yet no significant body of case law has been developed.

However, one of the most significant distinctions from Lodi's perspective may be the increased ability of charter cities to operate and set rates for city-owned utilities. With utility deregulation approaching, the city may need maximum flexibility to compete in an open marketplace and retain the viability of its electric utility service.

III HOW A CHARTER IS ADOPTED

There are two ways in which a charter may be proposed; first, a petition by not less than fifteen percent of the registered voters can be presented to the City Council (Government Code Section 34452). If enough signatures are valid, the Council must then call a special election or place the matter on the next regular municipal election. At such election, two questions are on the ballot; (1) shall a charter commission be elected to propose a new city charter?; and (2) who will the members of such a charter commission be? Assuming that the first question is approved by a majority of the voters, then up to fifteen members may be elected to form a charter commission, responsible for drafting the actual proposed charter.

The second method of adopting a charter is for the City Council itself to initiate the task. In such cases, the Council may oversee the drafting, or it may choose (if it wishes) to appoint a charter commission or simply an informal advisory group (Government Code Section 34458). Once the draft language is finalized, certain printing distribution and advertising requirements must be met (Government Code Section 34456).

Upon finalization of the draft, the Council may either call a special election or place the issue on the next regular election ballot, as long as this occurs at least eighty-eight days after the draft is finalized (Government Code Section 34458). A simple majority of voters is all that is needed to adopt a charter (Government Code Section 34459).

If approved, the charter becomes effective after it and certain related documents are filed with the Secretary of State. Once

adopted, amendments or repeal are accomplished in the same fashion.

SUMMARY

For a city, being chartered has both advantages and disadvantages. While it frees cities from some constraints of state law applicable to general law cities, imprecise drafting may also cause legal challenges. The result is sometimes a situation in which charter cities are more restricted than general law cities in certain areas (City of Roseville vs. Terry 158 Cal App 2d 75).

Other drawbacks may include the costs associated with the drafting of the charter and the election necessary for its adoption. For some residents, any change in the form of local government may cause anxiety. This can sometimes result in protracted controversy.

As an aside, it appears that charter elections are less controversial when the proposed charter addresses primarily financial considerations than when political issues are included. Such political issues could involve things like district voting, term limits, selection and compensation of Council Members, etc. For that reason, it may be desirable to focus more closely on financial issues than other considerations.

In the final analysis, one of the virtues of charters is the ability to tailor them to exactly fit local needs and desires.

FUNDING: None required.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "BW McNatt", with a horizontal line extending to the right.

Bob W. McNatt
City Attorney

BWM:pn